

S.N. 09/701,868  
D.N. 0066.99

extension. Please charge any additional fees which may be required at any time during prosecution of the instant application to deposit account 50-2134.

#### ELECTION

In response to the restriction under 35 USC §§ 121 and 372, applicants hereby provisionally elect with traverse the invention of Group I, claims 1-18 and 22-26, drawn to an isolated nucleic acid molecule, a method of making a recombinant vector, a recombinant vector, a recombinant host cell and a recombinant method for producing  $\beta$ -galactosidase II polypeptide.

In response to the requirement for the election of one nucleotide, applicants provisionally elect with traverse the species designated as TBG4, acc. no. AFO 20390, SEQ ID NO: 4 (nucleic acid) encoding the  $\beta$ -galactosidase II polypeptide having the amino sequence of SEQ ID NO: 11. The Examiner is respectfully reminded of the Markush practice discussed in paragraph 803.02 of the MPEP where it is stated that, "should no prior art be found that anticipates or renders obvious the elected species, the search of the Markush-type claim will be extended."

TRAVERSAL

It is pointed out that, according to MPEP 803, in order for a restriction requirement to be proper, two criteria must be met:

- (1) the inventions must be independent or distinct as claimed, and
- (2) there must be a serious burden on the examiner if restriction is not required.

Applicants respectfully traverse the restriction of the claims for the following reasons. In the instant application, the claims have been divided into six groups: Group I, drawn to claims to an isolated nucleic acid molecule and to a recombinant vector and various uses of that vector, and Group II, drawn to claims to an isolated  $\beta$ -galactosidase polypeptide. The remaining Groups contain claims further utilizing either the nucleic acid or the polypeptide, i.e. an epitope-bearing portion of the protein (Group III), an antibody specific for the protein (Group IV), a method of modifying cell wall metabolism in a plant by transformation with a construct comprising a nucleic acid molecule encoding  $\beta$ -galactosidase, transformation of a plant cell, a plant and a seed utilizing the nucleic acid molecule (Group V) and a method of modifying  $\beta$ -galactosidase II gene

expression in a plant by transformation with the nucleic acid molecule (Group VI).

The claims of Group II are related to those of Group I since the nucleic acid molecules of Group I encode the polypeptides of Group II. Moreover, Groups III and IV also encompass the polypeptides of Group II, therefore these claims are closely related to Group II, and thus to Group I. In particular, the Groups which involve transformation (Groups V and VI) are closely related to the claims of Group I since transformation requires the use of nucleic acid molecules to achieve that transformation.

It is therefore believed that no serious burden would be placed on the Examiner to examine all of the claims, since a reference which discloses the nucleic acid encoding the polypeptide would necessarily also disclose the polypeptide itself. It is also pointed out that a search for a transformation process or a transformed plant cell, plant or seed utilizing a nucleic acid molecule of Group I would of necessity encompass a search for the nucleic acid molecule itself. In addition, it is also believed that there would be no serious burden on the Examiner to search all the nucleic acid molecules since, as discussed in the specification at page 5 (Summary of

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the Invention), the sequences are derived from clones from a family of genes encoding  $\beta$ -galactosidases and are therefore closely related.

For these reasons, applicants respectfully request that the Examiner reconsider the restriction requirement and requirement for an election of species and examine all the claims together.

Respectfully submitted,

May 28, 2002  
Date

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\* an envelope addressed to: Assistant Commissioner for Patents, \*  
\* Washington, DC 20231, on May 28, 2002 \*  
\* (Date) \*  
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\* (Name of applicant, assignee, or Registered Representative) \*  
\* Janelle S. Graeter 5-28-02 \*  
\* (Signature) (Date) \*  
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